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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/306,552	05/06/99	TAGGART T	STEU-2418

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EXAMINER	
TAWFIK,S	
ART UNIT	**PAPER NUMBER**
3721	8

DATE MAILED: 03/16/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/306,552	TAGGART, THOMAS D.	
	Examiner	Art Unit	
	Sameh H. Tawfik	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

1)☒ Responsive to communication(s) filed on *21 February 2001* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-34* is/are pending in the application.

4a) Of the above claim(s) *20 and 22-34* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-19 and 21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)☐ All b)☐ Some* c)☐ None of the CERTIFIED copies of the priority documents have been:

1.☐ received.

2.☐ received in Application No. (Series Code / Serial Number) _____ .

3.☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

15) ☐ Notice of References Cited (PTO-892)
16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
18) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
19) ☐ Notice of Informal Patent Application (PTO-152)
20) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-11, 16-19 and 21are rejected under 35 U.S.C. 103(a) as being unpatentable over Gies (4,862,933) in view of Olsson (5,799,464).

Gies discloses a method for aseptically packaging aseptically sterilized foodstuffs comprising the steps of: providing a plurality of containers (cups 15); aseptically disinfecting the plurality of containers (apparatus 19) see for example (column 4, lines 18-23); aseptically filling the aseptically disinfected plurality of containers with the foodstuffs (apparatus 20) see for example (column 4, lines 23-25); and filling the aseptically disinfected plurality of containers at a rate greater than 100 container per minute (column 4, lines 35 and 36) the machine can be operated to produce 33,600 packages per hour which is equal to 560 packages per minute. Gies does not disclose the container is bottle nor sterilizing the foodstuffs before bottling. However, Olsson discloses containers made of glass or plastic bottles was filled with product from a filling machine (column 3, lines 38-45). Note that applicant admitted that it is well known in the art to sterilize food product in sterilizing packaging systems (Background Of The Invention; first paragraph) to store the food without refrigeration in shelves for a period of time at least twice as long as the storage period of the refrigerated non-sterile food.

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to have modified Gies's method for aseptically packaging aseptically sterilized foodstuffs by having containers made of glass or plastic bottles, as suggested by Olsson and because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin, 125 USPQ 416;* and by sterilizing the foodstuffs before packaging as suggested by the applicant's prior art, in order to store the food without refrigeration in shelves for a period of time at least twice as long as the storage period of the refrigerated non-sterile food.

Regarding claim 4 and 5: the reference of the prior art discloses the claimed invention except for the plastic is high density polyethylene. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Gies's method for aseptically packaging aseptically sterilized foodstuffs by having plastic with high density polyethylene, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a mater of obvious design choice. *In re Leshin; supra.*

Regarding claim 6: Gies discloses capping the container with aseptically disinfected lid (device 21) see for example (column 1, lines 37-39).

Regarding claims 8 and 11: Gies discloses disinfecting the interior of the plurality of containers with a hydrogen peroxide (column 1, lines 26-29).

Regarding claim 9: Gies discloses disinfecting the interior of the plurality of the plurality of container includes the application of the hydrogen peroxide spray and the activation and removal of the hydrogen peroxide using a sterilized air (column 1, lines 56-68 and column 2,

lines 1 and 2). Gies does not disclose the range of the application of the hot hydrogen peroxide for about 1 second and the removal of the hot hydrogen peroxide using hot air about 24 seconds. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Gies's method for aseptically packaging aseptically sterilized foodstuffs by having range of the application of the hot hydrogen peroxide for about 1 second and the removal of the hot hydrogen peroxide using hot air about 24 seconds, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller, 105 USPQ 233.*

Regarding claim 10: Gies discloses a feedback control system (controller 60) for maintaining aseptic container conditions.

Regarding claims 17-19: Gies does not disclose specifically the exact level of the sterilization of the foodstuffs to at least 12 log reduction in clostridium botulinum nor the level of disinfecting the containers to at least 6 log reduction in spore organisms nor the residual level of hydrogen peroxide is less than .5ppm. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Gies's method for aseptically packaging aseptically sterilized foodstuffs by having the level of the sterilization of the foodstuffs to at least 12 log reduction in clostridium botulinum and the level of disinfecting the containers to at least 6 log reduction in spore organisms and the residual level of hydrogen peroxide is less than .5ppm, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).*

Regarding claim 21: Gies discloses a device for aseptically packaging aseptically sterilized foodstuffs comprising means for providing a plurality of containers (picker device 17); means for aseptically disinfecting the plurality of containers (apparatus 19) see for example (column 4, lines 18-23); means for aseptically filling the aseptically disinfected plurality of containers with the aseptically sterilized foodstuffs (apparatus 20) see for example (column 4, lines 23-25); and means for filling the aseptically disinfected plurality of containers at a rate greater than 100 container per minute (column 4, lines 35 and 36) the machine can be operated to produce 33,600 packages per hour which is equal to 560 packages per minute. Gies does not disclose the container is bottle. However, Olsson discloses containers made of glass or plastic bottles was filled with product from a filling machine (column 3, lines 38-45) to improve transferring the filled container (column 2, lines 25 and 26).

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to have modified Gies's device for aseptically packaging aseptically sterilized foodstuffs by having containers made of glass or plastic bottles, as suggested by Olsson, in order to improve transferring the filled container.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Sizer et al. (5,770,232).

Gies and Olsson do not disclose a disinfecting the container by providing oxonia. However, Sizer discloses method of disinfecting the food container by using oxonia (column 2, lines 35-40) to improve the method of disinfecting the food contact surfaces of a food packaging machine (column 3, lines 19 and 20).

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to have modified Gies's method for aseptically packaging aseptically sterilized foodstuffs by disinfecting the container by providing oxonia, as suggested by Sizer, in order to improve the method of disinfecting the food contact surfaces of a food packaging machine.

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of B. Poole (2,491,015).

Gies and Olsson failed to disclose that disinfecting the container from the outside surfaces. However, Poole discloses method of sterilizing food containers (39) from outside (Fig. 4) the food containers (39) fed into a sterilizing fluid tank (1), see for example (column 1, lines 51-55) to sterilize all the parts of the container (column 1, lines 22 and 23).

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to have modified Gies's method for aseptically packaging aseptically sterilized foodstuffs by disinfecting the container from the outside surfaces, as suggested by Poole, in order to sterilize all the parts of the container.

Regarding claim 14: Gies discloses disinfecting the interior of the plurality of the plurality of container includes the application of the hydrogen peroxide spray and the activation and removal of the hydrogen peroxide using a sterilized air (column 1, lines 56-68 and column 2, lines 1 and 2). Gies and Olsson failed to disclose that disinfecting the container from the outside surfaces. However, Poole discloses method of sterilizing food containers (39) from outside (Fig. 4) the food containers (39) fed into a sterilizing fluid tank (1), see for example (column 1, lines 51-55) to sterilize all the parts of the container (column 1, lines 22 and 23). The prior art do not

disclose the range of the application of the hot hydrogen peroxide for about 1 second and the removal of the hot hydrogen peroxide using hot air about 24 seconds. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Gies's method for aseptically packaging aseptically sterilized foodstuffs by having range of the application of the hot hydrogen peroxide for about 1 second and the removal of the hot hydrogen peroxide using hot air about 24 seconds, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller, 105 USPQ 233.*

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of B. Poole (2,491,015) and Sizer et al. (5,770,232).

Gies and Olsson failed to disclose that disinfecting the container from the outside surfaces by providing oxonia. However, Poole discloses method of sterilizing food containers (39) from outside (Fig. 4) the food containers (39) fed into a sterilizing fluid tank (1), see for example (column 1, lines 51-55) to sterilize all the parts of the container (column 1, lines 22 and 23) and Sizer discloses method of disinfecting the food container by using oxonia (column 2, lines 35-40) to improve the method of disinfecting the food contact surfaces of a food packaging machine (column 3, lines 19 and 20).

Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to have modified Gies's method for aseptically packaging aseptically sterilized foodstuffs by sterilizing food containers from outside, as suggested by Poole, in order to sterilize all the parts of the container; and by disinfecting the food container by using oxonia,

as suggested by Sizer, in order to improve the method of disinfecting the food contact surfaces of a food packaging machine.

Response to Arguments

Applicant's arguments filed 2/21/2001 have been fully considered but they are not persuasive.

Applicant argues in page 2 and 3 of the argument that Gies's nor Olsson references disclose sterilizing the foodstuffs. The examiner agrees with the applicant that Gies's nor Olsson references disclose sterilizing the foodstuffs, but the examiner also believes that sterilizing the foodstuffs before bottling or packaging is old and well known in the art and the applicant admitted that in the (Background Of The Invention).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sameh H. Tawfik whose telephone number is (703) 308-2890. The examiner can normally be reached on Monday - Friday from 8:00 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (703) 308-1789. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-7769 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

ST
March 14, 2001

Ira S. Lazarus
Supervisory Patent Examiner
Group 3700

Attachment for PTO-948 (Rev. 03/01, or earlier)
6/18/01

The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

1. Correction of Informalities -- 37 CFR 1.85

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

Timing of Corrections

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.